INDEX

	Page
Appellees have failed to show changes since 1920 which warrant modifying the consent decree to permit defendants to manufacture and deal in unrelated lines	1
(1) Changes affecting the purchase of livestock	2
(2) The defendants' financial losses in 1921	3
(3) The lack of any existing monopoly in the packing industry	4
(4) The alleged growth of competitors	4
(5) The earnings of defendants and of their competitors	6
(6) Changed conditions in the food industry and the alleged present impossibility of a monopoly of foods	8
(7) Alleged increased cost of branch-house operation	13
The Packers and Stockyards Act does not apply to dealings by packers in unrelated lines	14
Appendix	20

CITATIONS

Fawcus Machine Co. v. *United States*, 282 U. S. 374	18
Swift & Co. v. *Akron C. & Y. Ry. Co.*, 167 I. C. C. 355	14
Universal Battery Co. v. *United States*, 281 U. S. 580	18
The Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159 (U. S. C., Title 7, Sec. 181 et seq.)	20
Cong. Rec., vol. 61, pt. 5, p. 4781	17

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 568

THE UNITED STATES OF AMERICA, APPELLANT

v.

SWIFT & COMPANY ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE UNITED STATES

APPELLEES HAVE FAILED TO SHOW CHANGES SINCE 1920 WHICH WARRANT MODIFYING THE CONSENT DECREE TO PERMIT DEFENDANTS TO MANUFACTURE AND DEAL IN UNRELATED LINES

The sole issue presented to this Court by the Government is whether appellees have shown changes since 1920 which warrant modifying the consent decree to permit the defendants (1) to manufacture and handle (except at retail) unrelated lines and (2) to use their distributive facilities in this connection.

As bearing upon this issue, it is of fundamental importance to observe that there has been no change in the condition set forth in the Government's bill as the principal ground for enjoining the defendants from dealing in unrelated lines. The Government's request for such an injunction rested primarily upon the allegation that the defendants could handle unrelated lines through their nation-wide distributive system with comparatively no additional overhead expense and could employ this advantage "temporarily to fix prices so low as to gradually eliminate competition," with consequent danger of monopoly and restraint of trade. (R. 17.) There has been no material change in the extent or character of defendants' nation-wide distributive system. And appellees admit, indeed assert, that they can to-day use this system to handle unrelated lines with practically no additional expense. (Gov. Brief, pp. 45–46.)

(1) Changes affecting the purchase of livestock

Many of the changes upon which appellees rely (brief, pp. 57–79)—increased cooperative selling and direct marketing of livestock, development of market news service, the activities of order buyers, the Trustees' reports regarding stockyards, and the enactment of the Packers and Stockyards Act—are not relevant to this issue since they concern changes which relate to the purchase of livestock. The Packers and Stockyards Act does contain other provisions than those which deal with regulation

of stockyards, but we set forth later (*infra*, pp. 17–19) the grounds for our belief that the Act does not apply to dealings in unrelated lines. Except as to this Act, appellees have failed to point out any connection between the foregoing changes and the question whether defendants should be permitted to manufacture and deal in articles which are not related to the livestock industry.

(2) The defendants' financial losses in 1921

Appellees rely (brief, pp. 43–46) upon losses suffered by the defendants in 1921 and by Armour (including Morris) in 1922. Appellees do not attribute these losses to the decree, but they contend (brief, p. 46) that the losses substantially weakened their financial position. Swift's loss in 1921 was $7,812,000, but its subsequent earnings available for dividends total $112,276,000, or more than fourteen times its 1921 loss. (Pet. Ex. 72, R. 888a.) Cudahy's 1921 loss was $1,570,000, but its subsequent earnings available for dividends total $20,873,000, or more than thirteen times its 1921 loss. (*Ibid.*) Wilson's earnings available for dividends since its bankruptcy in 1924 total $8,375,000. (*Ibid.*) Armour's 1921 and 1922 losses have not prevented it from acquiring since 1920 companies having annual sales prior to acquisition of over $242,000,000. (Pet. Ex. 125, not printed.) We submit that appellees have failed to show that the defendants' financial position has been so weakened, in compar-

ison with 1920, that they no longer have the power to monopolize or restrain trade.

(3) The lack of any existing monopoly in the packing industry

Appellees also rely (brief, pp. 81–88) upon the fact that there is no monopoly in the meat-packing industry at the present time. But the Government's bill did not charge that the attempt to monopolize and the danger of monopoly in unrelated lines resulted from a monopoly of the meat industry; it charged that this danger resulted from the vast resources of the defendants and from the advantages given them by their distributive systems. The decree gave relief designed both to maintain free and fair competition in the meat industry and in addition to prevent danger of monopoly or restraint of trade in unrelated lines. We submit that it was not intended that success in achieving the former purpose should be a ground for removing the restrictions imposed to achieve the latter end.

(4) The alleged growth of competitors

Appellees (brief, pp. 48–52) allege as changes since 1920 the growth of competitors and the defendants' present position in the meat industry. We have set forth in our main brief (pp. 42–43) the limited effect which can properly be given to the figures relied upon by appellees to show an increased number of meat-packing concerns or establishments.

Appellees show that the sales of certain competitors have increased. Upon this showing they base the exaggerated statements (brief, pp. 51, 52) that, "With one exception all defendants' competitors increased the volume of their business in the decade between 1920 and 1930," and that defendants "have not been able to hold their own strength" in a field "wherein flourish increasingly successful and strong competitors."

The figures which appellees themselves select (brief, p. 49) to demonstrate their position in the industry show that their percentage of the total United States production in meats and lards was 38.2% in 1920 and 38.3% in 1929. Since the defendants have thus maintained their relative position and since their total business decreased slightly from 1920 to 1929, the fact that particular competitors increased their business must mean that other competitors have correspondingly lost business.

Appellees called officials of certain packing companies and also put into the record the sales and earnings of certain alleged packing companies. No general conclusions can be drawn from this selected showing. There is nothing to show that the increase in the business of these companies was due to normal competitive growth rather than to acquisitions of established concerns. Thus, appellees state (brief, p. 50) that the 1920 [1] sales of Adolf

[1] The record does not show the 1920 sales; appellees have given for that year the figure shown for 1921. (Pet. Ex. 71, R. 866a.)

Gobel, Inc., were about $7,000,000 and its 1929 sales about $46,000,000. In fact, the sales of this company increased only $1,235,000 from 1921 to 1927, while in the next two years, when two important companies were acquired, they increased over $37,700,000. (Pet. Ex. 71, R. 866a, 885.) The court below nevertheless accepted the increase of this company's business as attesting "the nature and extent of the competition in this business." (R. 1045.) The figure given by appellees (brief, p. 50) as the 1929 sales of John Morrell & Company covers a period of 13 months, although their own exhibit shows that the 1929 sales of this company were more than $7,300,000 smaller than those stated. (R. 546, Pet. Ex. 71, R. 866a.) Furthermore, the court below relied upon the larger figure. (R. 1045.) And appellees include among their expanding competitors the Beech-Nut Packing Company, which is not essentially a meat-packing company (*infra*, p. 7.)

(5) The earnings of defendants and of their competitors

In the matter of earnings, appellees (brief, p. 52) likewise compare defendants' earnings with those of 15 selected competitors. But even on this basis, no unfavorable change since 1920 is shown. Defendants' percentage of earnings on sales was 24% in 1920 and 39% in 1929 of the corresponding percentages for these competitors. Defendants' percentage of earnings on net worth was 35% in

1920 and 33% in 1929 of the corresponding percentages of these competitors.

We also submit that the most accurate basis for a comparison of defendants' earnings with those of their competitors is that used in the table on page 39 of the Government's brief, which includes all slaughterers which ship their products in interstate commerce. The business of slaughterers selling only intrastate is not comparable with that of the defendants. The exclusion of processors who do not slaughter is also justified because the packing operations of many of these concerns form an insignificant portion of their total business and they are therefore not truly representative competitors. Thus, the packing business done by the Beech-Nut Packing Company, the processing company repeatedly cited by appellees (brief, pp. 40, 48, 53), is a minor part of its total business, which consists of—

> bulk and sliced bacon, hams and beefs packed in glass jars and cartons, peanut butter, conserves, jams, jellies, preserves, marmalades, pork and beans, prepared spaghetti and macaroni products, and condiments; also chewing gum, mints, fruit drops, candy drops, tea biscuit dainties, and coffees. (R. 502.)

Appellees have not answered the statement in the Government's brief (p. 39) that they operated on a more favorable basis in 1929 than in 1920. And they have inadequately answered (brief, p.

144) the Government's contention (brief, pp. 40–41) that they presented no data as to earnings from their domestic packing business. We submit that there has been a signal failure to make an affirmative showing of an unfavorable change in the matter of earnings.

(6) Changed conditions in the food industry and the alleged present impossibility of a monopoly of foods

Changes in the food industry are admitted. These changes are relevant only in so far as their effect would be to remove the danger alleged to exist in 1920 that the defendants, if not restrained, might successfully monopolize or restrain commerce in particular items of food.

Both regular and voluntary chains have increased in size and importance since 1920, but appellees have failed to show that these chains are not potential customers, both in meats and in unrelated lines, to substantially the same extent as the retailers whom they have supplanted. There is no evidence that voluntary chains manufacture any of the products which they sell and the extent to which the larger regular chains are shown to manufacture their own products is insignificant. As appears from appellees' brief (pp. 90–92), the five largest chains own only 32 factories or plants (other than bakeries) producing unrelated lines, as follows:

> Great Atlantic & Pacific Co.: 9 general food factories, 7 coffee roasting plants, 6 salmon canneries.

Kroger Grocery Co.: 1 candy factory, 1 beverage factory, 1 coffee roasting plant, 1 packing plant for olives and bottled goods.

Safeway Stores, Inc.: 1 candy factory.

American Stores Co.: 1 fruit and vegetable canning plant.

First National Stores, Inc.: 3 manufacturing plants.

The sales of the Great Atlantic & Pacific Company are almost four times those of the next largest chain (Pet. Ex. 69, R. 826a) and, as stated above, this chain has the largest number of food factories. About 17% of its sales are under its own brands and of the sales under its own brands (other than coffee), it manufactures only about 10%. (R. 740.) Therefore only about 1.7% of its total sales are of goods (other than coffee) manufactured by it and sold under its own brands. 58% of its sales are unbranded goods (R. 740), but the record does not show to what extent, if any, the company manufactures goods which it sells unbranded.

In the light of these facts, we submit that the following statement in appellees' brief (pp. 97–98) is unwarranted:

> The 120,000 chain stores will not be generally available to the defendants as customers for groceries, but will continue their present methods of manufacturing foods extensively and buying the remainder from the same source where the defendants will have to buy, namely, the manufacturers of foods.

Appellees allege (brief, p. 107) that "the ever-increasing extent to which chain organizations are performing packing-house operations" is a change of major importance. But the Kroger Company, referred to as the "outstanding example," operates only two slaughtering plants, one of which it has owned for over twenty years, and one processing plant for sausage. (R. 501.) Its total 1929 sales of its meat-packing products were less than $10,500,000 (R. 724), or about 1% of the total business of either Swift or Armour. Out of 1500 chain-store organizations (R. 517, 567), appellees refer (brief, p. 108) to a list introduced by them of 83 chain-store organizations which perform any meat-packing operations. Many of these organizations are negligible in size, as shown by the small number of stores or markets operated; only 10 of them do any slaughtering and of these 10 only 2 are shown to operate more than 15 stores or 15 markets. (Pet. Ex. 90, R. 921–936.)

Appellees allege (brief, p. 108) that "chain organizations" are now operating 30 processing plants as compared with 8 such plants operated by them in 1920. The testimony to which appellees refer (R. 533) does not state that the concerns listed are chain organizations. Included therein are such food manufacturers as General Foods Corporation and National Dairy Products Co. and such packers as Adolf Gobel, Inc., and Hygrade Foods Products Corporation. Only 4 of these

companies are included in the list introduced by appellees of chain stores performing meat-packing operations. (Pet. Ex. 90, R. 921.) These 4 companies now operate 18 processing plants, 15 of which are operated by the Great Atlantic & Pacific Co. (R. 533.) In all but one of these 15 plants the only processing done is bacon slicing. (R. 925–927.)

Appellees also rely (brief, pp. 94–95) upon the growth of general food corporations, instancing National Dairy Products Corporation, the Borden Company, and General Foods Corporation. The two former would not furnish competition in any of the unrelated lines in which the defendants will be permitted to deal under the decree as modified except caramels and dried fruit juices (Borden). (R. 499, 846.) General Foods Corporation and Standard Brands, Inc., manufacture and wholesale certain nationally advertised branded foods (R. 852, 854–856), which compose an insignificant portion of the articles in which defendants were forbidden to deal. Appellees have not pointed to a single concern of substantial size that has grown up since 1920 which would compete with them in

the manufacture and sale of the other articles falling within the prohibitions of the fourth and fifth paragraphs of the decree.

There is no inconsistency, as suggested by appellees (brief, pp. 83–84), between the testimony of the president of the Great Atlantic & Pacific Company, that over 90% of its meats in its eastern division are purchased from the defendants and the evidence that over the country as a whole 35% of its meats are purchased from the defendants. The president was referring to that part of the territory in which the company's meat business had been fully developed. (R. 744.) Appellees' attempt to discredit this testimony is their only answer to the contention of the Government (brief, pp. 55–56), based upon the finding of the court, that chain stores are largely dependent upon the defendants for their meat supplies. With the great development of stores selling both meats and groceries (R. 745, 1058), the competitive advantage given the defendants, if permitted to furnish retailers with both meat and groceries, is greater to-day than in 1920.

Appellees are in error in stating (brief, pp. 13, 101) that the distribution of foods is inadequate at the present time (R. 688, 773, 775, 797). The effect upon existing facilities of permitting the defendants to distribute groceries is shown by Mr. Snyder, the witness upon whom appellees chiefly rely, who said (R. 475):

> Of course if groceries are handled through these branch houses that will withdraw them to a degree from the existing facilities of distribution, and branch houses now employed in handling them will either become superfluous or available for something else—available to sell to somebody for salvage or other uses.

(7) Alleged increased cost of branch-house operation

Appellees contend (brief, pp. 109–113) that changes in methods of distribution adversely affect their branch-house business. They do not deny that the proportion of their business done through branch houses has been maintained, but they assert (brief, pp. 112–113) that these houses operate on a less profitable basis. They point to an increase from 1923 to 1930 in Swift's branch-house expense per cwt. of business handled, ignoring the fact that during the same period this expense decreased per dollar of sales handled. In 1923 Swift's branch-house sales were $423,262,408 and its branch-house expense was $21,140,302, or 4.99¢ per dollar of sales; in 1929 (1930 figures not given) its branch-house sales were $599,170,477 and its branch-house expense was $27,518,672, or 4.60¢ per dollar of sales. (Pet. Exs. 144, 145, R. 957, 958a.) This comparison gives effect to changes in the price level, whereas the test used by appellees disregards this all-important consideration.

That branch-house operation is still the most profitable method of doing business is shown by the

testimony of a vice-president of Swift. He said (R. 649):

> We have increased our number of branches since 1920, largely to serve growing territories, as it was the only method to get that class of business, and we did it because it was more advantageous to us.

Appellees make the contention (brief, pp. 125–126), not urged in the court below, that groceries can be used to make up the minimum weight in route cars in only certain sections of the country. An official of the Swift car route department testified that in practically all car route territories all commodities go to make up the minimum weight and that he did not think there would be any difficulty in obtaining a change in the tariffs in those sections of the country where the rule is otherwise. (R. 671.) It would seem clear that such a change in tariffs could be obtained since the decision in *Swift & Co.* v. *Akron, C. & Y. Ry. Co.*, 167 I. C. C. 355, 364, holding it unreasonable to exclude as a credit against the minimum charge on peddler cars the revenue on other articles shipped in the same car.

THE PACKERS AND STOCKYARDS ACT DOES NOT APPLY TO DEALINGS BY PACKERS IN UNRELATED LINES.

Appellees (brief, pp. 73–77) contend that the provisions of the Packers and Stockyards Act[2]

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[2] The relevant portions of the Act are set forth in the Appendix, *infra*, pp. 20–25.

which make it unlawful for any packer to engage in practices in interstate commerce which are unfair, discriminatory or in restraint of trade and which authorize the Secretary of Agriculture to enforce these prohibitions, apply to the entire interstate business, whether related to the packing industry or not, of any one who is a packer as defined in the Act. We submit that this interpretation of the Act is erroneous.

The title of the Act reads:

> An Act To regulate interstate and foreign commerce in livestock, live-stock products, dairy products, poultry, poultry products, and eggs, and for other purposes.

Section 2 (a) (6) provides that the term "commerce," when used in the Act, means interstate and foreign commerce. Section 2 (b) provides in part:

> For the purpose of this Act (but not in any wise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live-stock and meat-packing industries, whereby live stock, meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs, are sent from one State with the expectation that they will end their transit, after purchase, in another, * * *.

While the above provisions may be primarily intended as a declaration of the continuity of the

current of interstate commerce, it is significant that this continuity is defined solely in terms of the interstate commerce set forth in the title of the Act.

Section 201 provides that the term "packer," when used in the Act, means any person engaged in the business—

> (a) of buying live stock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, * * *.

But the section further provides that a person falling within the classification of clause (a) or (b) is a packer within the meaning of the Act if he is also engaged in the business—

> (c) of manufacturing or preparing live-stock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs, in commerce; * * *.

If the Act was intended to cover every activity of a packer, it was unnecessary and useless to provide that a person who is a packer because engaged in a business falling within (a) or (b) above is a packer if also engaged in a business falling within (c) or (d) above. The definition of packer thus reinforces the conclusion to be drawn from the title of the Act and its description of interstate commerce, that Title II of the Act regulates only com-

merce in livestock, poultry, eggs, and livestock, dairy, and poultry products.

We submit that the statement made by Mr. Haugen, which appellees quote (brief, p. 76), does not have the broad meaning attached to it by appellees. Mr. Haugen, in discussing the history of certain changes in his original bill made by the House Committee, said (Cong. Rec., Vol. 61, pt. 5, p. 4781):

> At the same time the farm bureau suggested that the definition of the term "packer" be so amended as to confine packers to those manufacturing or preparing meats or meat-food products for sale or shipment in commerce. While recognizing the justice of the complaint that the definition in the original Haugen bill might be construed to include independent tanneries, fertilizer plants, and other industries using by-products of the packing industry, the committee at once perceived that the adoption of the suggestions of the American Farm Bureau Federation would be to leave outside of all regulation such industries when conducted as subsidiaries of the packing industry. It[3] therefore amended the Haugen bill in such manner as to relieve from regulation these outside industries only when having no affiliation with a packer, but subjecting the packer to com-

[3] Appellees are in error in stating that this word refers to the conference committee. The reference is to the House Committee on Agriculture.

plete regulation, no matter what line of business he goes into.

The words, "no matter what line of business he goes into," appear to be used in connection with "these outside industries," and these words refer back to "industries using by-products of the packing industry."

The Secretary of Agriculture has never exercised any jurisdiction over the business of packers in unrelated lines. (R. 414.) The failure to exercise such jurisdiction[4] constitutes a long-continued administrative construction which is entitled to great weight. *Universal Battery Co.* v. *United States,* 281 U. S. 580, 583; *Fawcus Machine Co.* v. *United States,* 282 U. S. 374, 378. There is no inconsistency in administrative construction, as appellees seem to suggest (brief, pp. 75–76), in the fact that the Secretary has exercised jurisdiction under Title II over a private stockyard operated by a packer. The operation of such a yard directly involves commerce in live stock.

Appellees also assert (brief, p. 75) that Congress certainly did not intend to place packers partly under the jurisdiction of the Secretary of Agriculture and partly under the jurisdiction of the Federal Trade Commission. On the contrary, we believe it appropriate to give to different agencies

[4]Appellees urge (brief, pp. 77, 118) both that a large force is engaged in administering the Act and that many meat-packing concerns are now selling unrelated lines.

jurisdiction over totally unrelated activities, just as the packers may be subject to the jurisdiction of both the Interstate Commerce Commission and the Secretary of Agriculture. We submit that Congress intended the Federal Trade Commission, rather than the Secretary, to act as the enforcing agency if, for example, a packing company engaged in unfair practices in the sale of railroad bumping posts or draft gears for freight cars.

The provisions of Section 406 do not in any way support appellees' interpretation of the Act.

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MARCH, 1932.

APPENDIX

The Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 163, 168, 169 (U. S. C., Ttitle 7, Sec. 181 *et seq.*), provides in part as follows:

An Act To regulate interstate and foreign commerce in live stock, live-stock products, dairy products, poultry, poultry products, and eggs, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—DEFINITIONS

This Act may be cited as the "Packers and Stockyards Act, 1921."

SEC. 2 (a) When used in this Act—

(1) The term "person" includes individuals, partnerships, corporations, and associations;

(2) The term "Secretary" means the Secretary of Agriculture;

(3) The term "meat food products" means all products and by-products of the slaughtering and meat-packing industry—if edible;

(4) The term "live stock" means cattle, sheep, swine, horses, mules, or goats—whether live or dead;

(5) The term "live-stock products" means all products and by-products (other

than meats and meat food products) of the slaughtering and meat-packing industry derived in whole or in part from live stock; and

(6) The term "commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

(b) For the purpose of this Act (but not in any wise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live-stock and meat-packing industries, whereby live stock, meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs, are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for slaughter of live-stock within the State and the shipment outside the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

TITLE II.—PACKERS

SEC. 201. When used in this Act—

The term "packer" means any person engaged in the business (a) of buying live-stock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing live-stock products for sale or shipment in commerce, or (d) of marketing meats, meat foot products, live-stock products, dairy products, poultry, poultry products, or eggs, in commerce; but no person engaged in such business of manufacturing or preparing live-stock products or in such marketing business shall be considered a packer unless—

(1) Such person is also engaged in any business referred to in clause (a) or (b) above, or unless

(2) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, any interest in any business referred to in clause (a) or (b) above, or unless

(3) Any interest in such business of manufacturing or preparing live-stock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, by any person engaged in any business referred to in clause (a) or (b) above, or unless

(4) Any person or persons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggre-

gate 20 per centum or more of the voting power or control in such business of manufacturing or preparing live-stock products, or in such marketing business and also 20 per centum or more of such power or control in any business referred to in clause (a) or (b) above.

SEC. 202. It shall be unlawful for any packer to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer, any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in com-

merce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e).

* * * * *

TITLE III—STOCKYARDS

* * * * *

TITLE IV.—GENERAL PROVISIONS

* * * * *

SEC. 406. (a) Nothing in this Act shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission.

(b) On and after the enactment of this Act, and so long as it remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary, except in cases in which, before the enactment of this Act, complaint has been served under section 5 of the Act entitled "An Act to create a Federal Trade Commission, to define

its power and duties, and for other purposes," approved September 26, 1914, or under section 11 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case.

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